_

_

***THE HONOURABLE SRI JUSTICE K.G. SHANKAR**

+W.P. No.22939 of 2007

%04-11-2013

#Sk. Nazir, S/o Sk Khaja, aged 40 years, R/o 7-5-103, Sukravarampet, Khammam, Khammam District.

….petitioner

Vs.

$ Northern Power Distribution Company of A.P. Limited represented by its Chairman and Managing Director, Corporate Office, Warangal, Warangal District and two others

…. Respondents

!Counsel for the petitioner : Sri M. Surender Rao

Counsel for the Respondents: Sri P. Laxma Reddy, S.C for AP TRANSCO

<Gist :

>Head Note:

? Cases referred:

HON'BLE SRI JUSTICE K.G. SHANKAR

WRIT PETITION NO. 22939 OF 2007

ORDER:

The petitioner was an Assistant Lineman. Alleging that he was involved in theft of material of the employer and also alleging that he resorted to misappropriation, the petitioner was placed under suspension. After due enquiry, the petitioner was terminated from service. Questioning the same, the present Writ Petition is laid.

The petitioner joined the service as an Assistant Junior Lineman on compassionate grounds through orders dated 21.2.1991. In 1995, the petitioner was promoted as Assistant Lineman. Along with S. Krishnamurthy Raju and five others, the petitioner allegedly committed theft of the property of the respondents. A criminal case was instituted against the petitioner and others. On 29.8.2001, the petitioner was placed under suspension.

On 20.12.2001 a charge memo was issued. The petitioner submitted explanation on 13.6.2002. However, an enquiry was held on 25.7.2002. The Enquiry Officer submitted his report on 26.8.2002. A show cause notice was issued on 30.12.2002 on the basis of the report of the enquiry officer. On 8.1.2003, the petitioner submitted reply requesting to drop further proceedings. However, orders were passed on 27.5.2004 terminating the petitioner from services. The petitioner preferred an appeal before the Superintending Engineer, which was dismissed on 16.10.2004. Questioning the same, the petitioner filed the present Writ Petition.

The petitioner attacked the orders of termination on two grounds viz., first that S. Krishnamurthy Raju, co-employee and co-accused of the petitioner, who was also found guilty by the Enquiry Officer and was also dismissed from service was reinstated into service subsequently and thus discrimination is shown between the petitioner and S. Krishnamurthy Raju, and secondly, that very enquiry report is incorrect as the Enquiry Officer placed reliance upon the evidence of villagers and Circle Inspector, who were not examined before the petitioner and the petitioner

was not accorded opportunity to cross-examine those witnesses.

The enquiry report shows that there was theft of various electrical material and that certain Conductors, Cables, Cross arms, Pin Insulators and discs were recovered at the instance of the petitioner and other employees. Consequently, charge sheet was issued against the petitioner. A Criminal Case in C.C.No. 1138 of 2004 was instituted on the file of Additional Judicial Magistrate of First Class, Kothagudem against the petitioner and others. S. Krishnamurthy Raju and G. Srinivasulu Reddy were also accused in CC No. 1138 of 2004. The petitioner and others were charged for the offences under Sections 379 and 409 IPC. After full-fledged trial, the Trial Court acquitted S. Krishnamurthy Raju. It also acquitted the petitioner so far as the charge under Section 409 IPC is concerned. The petitioner, however, was found guilty for the offences under Section 379 IPC and was convicted. Aggrieved by the same, the petitioner preferred Criminal Appeal No. 29 of 2005 on the file of III Additional Sessions Judge, Fast Tract Court, Khammam. The Sessions Court acquitted the petitioner through judgment dated 13.2.2006. Thus the petitioner

also stood acquitted like S. Krishnamurthy Raju albeit S. Krishnamurthy Raju was acquitted by the Trial Court while the petitioner was acquitted by the Appellate Court.

While so, in the departmental enquiry, the Enquiry Officer claimed that the petitioner helped S. Krishnamurthy Raju and G. Srinivas Reddy to take away the material and was not a party to the stealing material. The Enquiry Officer, having so concluded, proceeded further and recorded that the villagers of Rayagudem and Sitampet submitted representations that the petitioner was indulging himself in criminal activity. The Enquiry Officer also referred to the report of the Circle Inspector of Police, Chintoor. It is the contention of the learned counsel for the petitioner that none of the villagers of Rayagudem and Sitampet submitted written representation nor the Circle Inspector of Police, Chintoor was examined in the enquiry and that the Enquiry Officer could not rely upon their statements. The report of the enquiry shows that barring for the statements of the villagers of Rayagudem and Sitampet and the report of the Circle Inspector of Chintoor, the evidence left an impression that the petitioner did not commit the offence of committing theft or committing

breach of trust.

Further the Enquiry Officer also concluded that the evidence on record shows that the petitioner has helped S. Krishnamurthy Raju and G. Srinivas Reddy in committing theft of the material of the respondents. Consequently, it is not as though the petitioner can be found not guilty by the Enquiry Officer but for reliance upon the evidence of the Villagers of Rayagudem and Sitampet and the report of the Circle Inspector. The evidence recorded by the Enquiry Officer in the enquiry report shows that the petitioner helped the other accused in committing theft. I, therefore, am not able to agree with the contention of the learned counsel for the petitioner that the enquiry report is unsustainable as it is relied upon the evidence, which was not recorded before the petitioner. In that view of the matter, I do not deem it appropriate to interfere with the report of the Enquiry Officer.

The more important contention of the learned counsel for the petitioner is that the petitioner ought to have been treated on par with S. Krishnamurthy Raju, who was also a Co-Junior Lineman and was also found guilty by the Enquiry Officer in the enquiry against S. Krishnamurthy Raju. Curiously, S. Krishnamurthy Raju was initially

terminated from service after he was found guilty. Subsequently, the departmental appeal of S. Krishnamurthy Raju was also rejected. However, through proceedings dated 28.11.2005, he was reinstated into service pending disposal of the enquiry and was given posting.

The learned counsel for the petitioner submitted that the question of reinstating S. Krishnamurthy Raju into service, pending disciplinary proceedings, does not arise. As the disciplinary action was taken against S. Krishnamurthy Raju, whose services were also terminated, the order dated 28.11.2005 would virtually amount to reinstatement of the petitioner. Even otherwise, as long as the petitioner stands on the same footing as S. Krishnamurthy Raju, he deserves to be treated like S. Krishnamurthy Raju.

S. Krishnamurthy Raju and the petitioner faced the same charge as can be seen from the respective charge sheets. The petitioner and S. Krishnamurthy Raju also faced similar criminal charges. S. Krishnamurthy Raju, however was acquitted by the Trial Court in CC No. 1138 of 2004 and the petitioner was

convicted by the Trial Court but was acquitted by the appellate Court through judgment dated 13.2.2006. Thus the petitioner was also acquitted as in the case of S. Krishnamurthy Raju. While S. Krishnamurthy Raju was Junior Line Man, the present petitioner appears to be Assistant Lineman. The Enquiry Officer found their culpability in equal terms. In such circumstances, where S. Krishnamurthy Raju is reinstated into service, the petitioner also deserves to be reinstated into service treating him on par with S. Krishnamurthy Raju. Consequently, this Writ Petition deserves to be allowed.

Accordingly, this Writ Petition is allowed. Respondents are directed to reinstate the petitioner into service within four weeks from the date of receipt of a copy of this order and shall treat the case of the petitioner on par with the case of S. Krishnamurthy Raju. No costs. Miscellaneous petitions, pending if any in this Writ Petition, shall also stand closed.

_____

JUSTICE K.G.SHANKAR

DATE: 04.11.2013
KA